

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DWAYNE THOMPSON,

Defendant-Appellant.

UNPUBLISHED
February 17, 2004

No. 244236
Wayne Circuit Court
LC No. 01-012312

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm defendant's convictions but remand for correction of the presentence report. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court views the evidence presented in a light most favorable to the prosecution, and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

Assault with intent to do great bodily harm less than murder requires proof of: (1) an attempt or threat with force or violence to do corporal harm to another, i.e., an assault; and (2) an intent to do great bodily harm less than murder. The offense is a specific intent crime. Intent can be inferred from the circumstances of the incident. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The infliction of an actual injury is not necessary. CJI2d 17.7(4).

Defendant argues that the evidence failed to support his conviction of assault with intent to do great bodily harm less than murder. We disagree. Defendant acted deliberately to locate and confront the victim with a loaded gun. The circumstances supported an inference that defendant specifically intended to cause great bodily harm. The evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction. *Petrella, supra; Parcha, supra.*

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Counsel's performance must have resulted in prejudice. To establish prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.*, 600.

The presentence report misidentified the parties involved in an earlier altercation that apparently precipitated the later assault. Trial counsel erred by failing to bring the error to the trial court's attention, but counsel's error did not constitute ineffective assistance. The trial court was aware of the true facts. No prejudice occurred as defendant was sentenced on accurate information. *Carbin, supra*. Nevertheless, we remand with instructions that the trial court correct the presentence report to reflect that defendant's sister was involved in the altercation with Jason Orr and forward a copy of the corrected report to the Department of Corrections. MCR 6.425(D)(3); MCR 7.216(7).

Defendant's convictions are affirmed but the matter is remanded for correction of his presentence report. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens